IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 22920 of 2004

Between:

M/s. Sha Pokaraj Suresh Kumar Jain, #7-1-653, Market Street, Secunderabad, rep. by its Partner Pokraj Suresh Kumar Jain.

..... PETITIONER

AND

1 Income Tax Officer, Ward-5, (11) Circle-5, Hyderabad.
2 Tax Recovery Officer, Range-II, Hyderabad.
3 The Dy. Commissioner of Income Tax (Appeals)-II,

Hyderabad.
4 The Commissioner of Income Tax, AP-I, Hyderabad.
5 The Income Tax Appellate Tribunal, Hyderabad Bench, -

"A", Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ/direction or order

preferably a writ in the nature of Mandamus leading to the passing of the impugned order bearing No. GIR No. S-401/95-96, dt. 08.12.1995 passed by the 1st respondent and set aside the same as illegal and untenable while allowing the claim of the Partners remuneration with all consequential benefits including refund of the amount paid under protest with interest and pass such other order or orders.

Counsel for the Petitioner:MR.A.SITA RAMA RAO

Counsel for the Respondent No.: MR.B.NARASIMHA SARMA

The Court at the admission stage made the following :

O R D E R (Per MHSA,J)

Instant writ petition is filed questioning the order of the assessing authority dated 8.12.2995, whereby the application filed by the petitioner – assessee under Section 154 of the Income Tax Act, 1961 (for brevity 'the Act'), was rejected on the ground that there is no mistake apparent from the record to rectify the assessment made under Section 143 (1)(a) of the Act.

2. The appeal against the said order was filed by the petitioner herein

on 25.2.1998, whereas the said order had been received by the petitioner on 14.2.1996. The appeal was filed with a delay of more than two years. The same was dismissed as time barred by the Deputy Commissioner of Income Tax (Appeals) by his order dated 26.8.1998. Instead of preferring an appeal against the said order, the petitioner chose to file a revision under Section 264 of the Act before the learned Commissioner of Income Tax. The same was dismissed as not maintainable and aggrieved against the same, petitioner filed an appeal before the learned Income Tax Appellate Tribunal, which dismissed the appeal on the ground that Section 253 of the Act does not provide for right of appeal against the order passed under Section 264 of the Act.

3. No valid ground is made out warranting interference with the said order by the authorities under challenge in the instant writ petition. The only submission made before us is that the petitioner is a 'kirana merchant' and, therefore, could not take steps in time and should not be denied the opportunity of being heard on merits. It was further submitted that for the wrong advise of counsel, petitioner should not be penalized.

4. Instant case is not one of mistake or wrong advise. Petitioner did not file appeal against the order of the assessing authority rejecting the application under Section 154 of the Act. It was only after reminder was received from the Tax Recovery Officer that the petitioner chose to prefer an appeal with a delay of two years. Same is apparent from the application filed for condonation of delay (page No.23 of the material papers).

5. We accordingly find no ground to entertain the writ petition.

Same is accordingly dismissed at admission stage.

M.H.S.ANSARI,J

ELIPE DHARMA RAO,J

AVS

DATE:30.12.2004

To.

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6 Two C.D. copies.